

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 771 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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Apporva Shantilal Shah

Versus

Smt.Sudha Philip & Others

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Appearance:

MR MJ THAKORE for Petitioner

None Present for the respondents.1

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/12/98

ORAL JUDGEMENT

The order dated 10.10.1998 of the City Civil Court No.5, Ahmedabad in the Civil Suit No.2788 of 1988 under which the application filed by the defendant petitioner for amendment of the written statement has been rejected gives rise to filing of this Civil Revision Application before this Court by him.

2. The Learned Counsel for the defendant petitioner contended that the Court should be liberal in granting of permission to amend the written statement. It has next been contended that similar amendment has been permitted by the Trial Court in the suit between the parties in

respect of the property in favour of other side but in this case that has not been granted. Lastly, the learned Counsel for the petitioner contended that the application for amending plaint has been rejected on the ground which is wholly arbitrary.

3. Nobody is present on behalf of the other side to make the submission in this matter.

4. The suit out of which this revision application arises has been filed by the other side for obtaining a letter of administration of the will annexed as a sole legatee of deceased Vasantben Shantilal who died on 16.3.1980. The defendant petitioner challenging the prayer for grant of letter of administration in favour of the plaintiff respondent has also filed Civil Suit No.69/1983 for the administration of the estate of the deceased. By way of amendment in the written statement the defendant petitioner wanted to challenge the power of the deceased Vasantben to give an option to purchase a share in the Shahibaug property to defendant no.3 and by challenging the deceased Vasantben's right to give such option, the plaintiff respondent had challenged part of the will and therefore has forfeited her right to be entitled to letter of administration of Vasantben's property.

5. The learned Trial Court has not committed any material irregularity in exercising its jurisdiction in passing the impugned order. It is to be noticed that even if the will by deceased Vasantben is proved by the present plaintiff respondent yet it is in the discretion of the Court still it may not find it proper having regard to the provisions contained in Section 298 of the Indian Succession Act to grant letter of administration in her favour. By this amendment, the defendant petitioner sought to raise a point that the plaintiff respondent had challenged the will or part of the will and she rendered herself disentitled to grant a letter of administration and it is a legal question. It is true that the learned Trial court has observed that this question is mixed question of law and fact but it is not the matter where it is a pure question of fact and otherwise also for this plea the necessary facts can be brought on record in the evidence. The rest is a matter of pure question of law. Whether for the reasons as stated the plaintiff respondent is disentitled herself from getting the grant of letter of administration to the estate of deceased Vasantben is a question of law and it has to be decided if raised by the Court. In such matters the amendment is not necessary and it is open to

the defendant petitioner to raise such a point at the time of final hearing of the matter. Though the reasons which have been given by the Court below for rejection of the application of the defendant petitioner for amendment of their written statement may not be correct but the ultimate decision given does not call for interference. The Learned Counsel for the defendant petitioner insisted that this court may observe that this matter can be agitated by him at the time of final hearing of the suit. I am of the opinion, that no such observation is necessary in view of this decision. Otherwise also it is a matter of raising a legal question on which the necessary facts can be given in evidence and certainly for doing both the things aforestated it is not necessary for grant of the application filed by the defendant petitioner for amendment of the written statements. In the result this revision application fails and the same is dismissed. No order as to costs.

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